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FEDERAL WORKFORCE RESTRUCTURING ACT OF 1993

NOVEMBER 19, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLAY, from the Committee on Post Office and Civil Service,
submitted the following

R E P O R T

[To accompany H.R. 3345]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 3345) to amend title 5, United States Code, to eliminate certain restrictions on employee training; to provide temporary authority to agencies relating to voluntary separation incentive payments; and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 3345 is to authorize certain Executive branch agencies to offer voluntary separation incentive payments of up to \$25,000 to employees who resign or retire early from government service and to relax restrictions currently governing Federal employee training.

COMMITTEE ACTION

On October 13, 1993, the Subcommittee on Compensation and Employee Benefits and the Subcommittee on the Civil Service conducted a joint hearing on H.R. 3218, "The Federal Workforce Restructuring Act of 1993" (Serial No. 103-24), legislation introduced by the Honorable William L. Clay at the request of the administration. Testimony was received from the Hon. Lorraine A. Green, Deputy Director of the Office of Personnel Management; Mr. Ron

Sanders, Acting Assistant Secretary of Defense for Civilian Personnel Policy for the Department of Defense; and organizations representing Federal management and rank-in-file employees.

On October 19, 1993, the Subcommittee on Compensation and Employee Benefits held a second hearing on H.R. 3218 (Serial No. 103-24). Testimony was received from the Hon. Philip Lader, Deputy Director of the Office of Management and Budget; Mr. James L. Blum, Deputy Director of the Congressional Budget Office; and a panel of Federal officials representing the Department of the Treasury, the Department of Housing and Urban Development, and the Department of Energy.

On October 20, 1993, the Subcommittee on the Civil Service, by a record vote of 5 to 0, with a quorum present, approved H.R. 3218, with an amendment, for full committee consideration. The amendment made the evaluation of training a fundamental responsibility of each agency in designing a training program; restored to the training law the requirement that employees be informed of criteria for training selection and assignment; and directed the agencies to maintain information concerning expenditures for training and information to ensure training is provided in a manner consistent with laws to protect and promote equal employment opportunity.

On October 21, 1993, the Subcommittee on Compensation and Employee Benefits by a record vote of 5 to 0, with a quorum present, approved H.R. 3218, with an amendment, for full committee consideration. The amendment clarified that the purpose of the bill is "to avoid or minimize the need for involuntary separations due to a reduction in force, transfer of function, or other similar action"; extended the period for voluntary separation incentive payment authority from September 30, 1994, to December 31, 1994; required agencies to formulate written separation incentive plans which must be made available to their employees, and to the organizations representing their employees; and struck provisions from the bill expressing the "Sense of the Congress" that employment in the Executive Branch should be reduced by one position for every two employees receiving separation incentive payments.

On October 22, 1993, Chairman William L. Clay introduced H.R. 3345, a bill containing the provisions of H.R. 3218, as amended by the two subcommittees.

On October 27, 1993, the Committee on Post Office and Civil Service, by a record vote of 17 to 2, with 13 members present, ordered H.R. 3345 favorably reported without amendment.

SUMMARY

H.R. 3345 amends chapter 41 of title 5, United States Code, by eliminating certain restrictions on the training of Federal employees. H.R. 3345 allows agencies to train employees for different positions in their own or in other Federal agencies; provides that employee training would be related to achieving the agency's mission and performance goals; and lists restrictions and distinctions on Government vs. non-Government training.

H.R. 3345 also provides authority to certain Executive agencies to offer voluntary separation incentive payments of up to \$25,000 to employees who agree to retire or resign voluntarily from Govern-

ment service. Agency heads must designate a continuous 90-day period during which the voluntary incentive payments will be offered. That period must fall between the date of enactment and December 31, 1994. Under H.R. 3345, agencies utilizing the authority are required to formulate written plans for the use of voluntary separation incentives which must be made available to all of their employees and to the organizations representing their employees.

Only employees who have completed 12 months of continuous service are eligible for voluntary separation incentive payments. Reemployed annuitants and employees eligible for disability retirement are ineligible for voluntary separation incentive payments. Employees of the Department of Defense and the Central Intelligence Agency are covered by separate but similar programs.

Under H.R. 3345, agency heads must designate components of their agencies, particular occupations, geographic locations, or any combination thereof, where voluntary separation incentive payments will be offered. An employee's separation may be delayed for up to two years when the agency head determines that the delay is necessary to ensure the performance of the agency's mission. Employees who are reemployed by the Federal Government within two years of accepting a voluntary separation incentive payment must repay the entire voluntary separation incentive payment, although this requirement may be waived where necessary to overcome exceptional recruiting difficulties. H.R. 3345 also extends this repayment requirement to employees receiving voluntary separation incentive payments under the Department of Defense and the Central Intelligence Agency programs. The bill amends current civil service retirement law to require that for each early retirement under the Civil Service Retirement System, agencies must deposit 9 percent of an employee's final pay into the retirement fund.

STATEMENT

On February 10, 1993, President Clinton signed Executive Order 12839. The Executive Order, directed at downsizing the Federal workforce, ordered all Executive Branch agencies and departments with over 100 employees (measured on a full-time equivalent (FTE) basis) to eliminate at least 4 percent of their civilian workforce by the end of fiscal year 1995. The Executive Order also directed that the reductions be achieved by attrition and early-out programs established at the discretion of agency heads; that 10 percent of the reductions come from the Senior Executive Service, GS-15 and GS-14 levels, or their equivalents; that agencies achieve 25 percent of their total reductions by the end of fiscal year 1993, 62.5 percent by the end of fiscal year 1994, and 100 percent by the end of fiscal year 1995. In implementing the reductions, the Executive Order instructed the Director of the Office of Management and Budget to issue "detailed instructions." With respect to independent agencies, the Executive Order requested that all such agencies comply with the provisions of the order.

On February 17, 1993, President Clinton delivered to Congress "A Vision of Change for America," a document outlining his budget proposals. In this document, President Clinton references the goal of reducing the civilian workforce by 100,000 by the end of fiscal year 1995, projecting the 1994 to 1997 savings to the Government

to be \$7.927 billion. (See "A Vision of Change for America," p. 124, Table 2, "Multi-Agency: Administrative Efficiencies".) In a later table, a total reduction of 152,800 civilian positions is projected over the five-year period between 1993 and 1997. (See *Id.*, at 142, Table 9, "Total executive branch".)

On March 4, 1993, the Director of the Office of Management and Budget issued Office of Management and Budget Bulletin No. 93-08 to the heads of Executive agencies and departments. The purpose of the bulletin was to provide guidance to Executive agencies and departments on the implementation of Executive Order 12839. The bulletin directed Executive agencies to limit hiring or to "take other action as necessary" to meet the 100,000 workforce reduction target. The bulletin specified that neither it nor the Executive Order authorized special early out programs or required agencies to undergo reductions-in-force. In addition, the bulletin provided that the Director of the Office of Management and Budget could grant limited exemptions to agencies which sufficiently documented that staffing above the directed reductions was necessary to "assure that essential services are provided and applicable provisions of law are carried out."

The Concurrent Resolution on the Budget for 1994, which passed the House on March 31, 1993, and passed the Senate on April 1, 1993, assumed savings resulting from the Administration's proposals for "administrative efficiencies" and "streamlining." (See H. Rpt. 103-31, "Concurrent Resolution on the Budget—Fiscal Year 1994," p. 64).

On April 8, 1993, the President submitted to Congress the Budget of the United States Government for Fiscal Year 1994. The Budget projected a civilian workforce reduction of 101,800 positions between 1993 and 1995. (See "Budget of the United States Government—Fiscal Year 1994," p. 38).

On September 7, 1993, Vice President Gore's National Performance Review released its report entitled "From Red Tape to Results: Creating a Government that Works Better and Costs Less." In the preface of this report, the Vice President states that the implementation of the National Performance Review recommendations will allow the Federal government to reduce its non-postal civilian workforce by 12 percent, or 252,000 positions, over the next five years. (See "From Red Tape to Results: Creating a Government that Works Better and Costs Less," p. iii). The report also recommended eliminating narrow restrictions on employee training to help develop a multiskilled workforce; redefining the objective of federal training as the improvement of individual and organizational performance; and lifting the distinctions between Government and non-Government training. (*Id.* at 80)

On September 11, 1993, President Clinton issued a "Memorandum for Heads of Departments and Agencies." The memorandum instructed agency heads to submit streamlining plans to achieve the National Performance Review's 12 percent workforce reduction to the Director of the Office of Management and Budget by December 1, 1993. As in Executive Order 12839, independent agencies were requested to comply with the streamlining directives.

On October 1, 1993, the Administration submitted to Congress a legislative proposal entitled the "Federal Workforce Restructuring

Act of 1993". The proposal, characterized as "an initiative of the National Performance Review," authorizes agencies to offer separation incentive payments to encourage Federal employees to resign or retire voluntarily from Government service and eliminates certain restrictions currently applicable to Federal employee training. The proposal was introduced by Chairman William L. Clay on October 5, 1993, (H.R. 3218).

During hearings on the "Federal Workforce Restructuring Act of 1993," widespread support for the bill was expressed by Federal employee organizations and management associations, both of which viewed the bill as an important tool for effective restructuring of the Federal government and as a way to reduce personnel levels in the Federal government humanely and without resorting to involuntary separations or reductions in force. However, a number of concerns were raised about the provisions of the bill.

One concern was that the 90-day period for offering separation incentives would provide insufficient time for employees to adequately and comfortably consider the offers. A second concern was whether the Office of Management and Budget's guidance to agencies about their voluntary separation incentives and streamlining programs should direct that agency plans effectuate the NPR recommendations regarding the de-layering of managerial ranks. A third concern regarded the basis of the Administration's determination that the Federal workforce should be reduced by 252,000 positions.

There also was some concern expressed about the need for a review of training in the Federal government and the need to inform all employees of their options with regard to training.

The initiative discussed above make clear that the Administration plans to significantly downsize and restructure the Federal workforce. H.R. 3345 is critically important to this effort. The amendments adopted to H.R. 3218 and subsequently incorporated into H.R. 3345 are important improvements to the "Federal Workforce Restructuring Act of 1993."

The committee is concerned that some employees who might otherwise agree to retire will be unable to do so because of the general requirement that employees have been enrolled in the Federal Employees Health Benefits (FEHB) Program for the five years immediately before retirement in order to continue FEHB coverage after retirement. The committee notes that the Office of Personnel Management has authority, under current law, to waive this requirement when the strict application of the requirement would be against equity and good conscience. The committee believes that the widespread use of early voluntary retirement authorizations and voluntary separation incentive payments envisioned by the Administration constitutes the sort of exceptional circumstance warranting use of this waiver authority, and urges the Office of Personnel Management to exercise its discretion to apply the waiver in conjunction with this situation.

SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section provides that this Act may be cited as the "Federal Workforce Restructuring Act of 1993."

SECTION 2. TRAINING

Section 2 of the bill amends chapter 41 of title 5, United States Code, to provide authority for agencies to train employees for different positions in their own or in other federal agencies, and to establish a new goal that employee training assist in achieving the agency's mission and performance targets. Section 2 removes restrictions and distinctions on Government versus non-Government training.

Section 2 also makes the evaluation of training a fundamental responsibility of each agency in designing a training program and restores the requirement that employees be informed of criteria for training selection and assignment. The section further directs agencies to maintain information and submit reports to the Office of Personnel Management, at least once every three years, concerning expenditures for training and information to ensure training is provided in a manner consistent with laws to protect and promote equal employment opportunity.

SECTION 3. VOLUNTARY SEPARATION INCENTIVES

Section 3 provides authority for Executive branch agencies to pay voluntary separation incentives to employees who agree to resign or retire.

Section 3(a)(1) defines the term "agency" to mean an Executive agency, as defined by section 105 of title 5, United States Code, but does not include the Department of Defense, the Central Intelligence Agency, or the General Accounting Office.

Section 3(a)(2) defines the term "employee" to mean an employee, as defined by section 2105 of title 5, United States Code, who is employed by an agency, is serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 12 months. Included is an individual employed by a county committee established under section 590h(b) of title 16, United States Code, but not a reemployed annuitant under the Civil Service Retirement System, the Federal Employees' Retirement System, or another retirement system for Government employees, or an employee who has a disability sufficient to confer eligibility for disability retirement.

Section 3(b)(1) authorizes the head of an agency, in order to avoid or minimize the need for involuntary separations due to a reduction in force, reorganization, transfer of function, or other similar action, to pay voluntary separation incentive payments to employees in any component of the agency, in any occupation, in any geographic location, or on the basis of any combination of these factors.

Section 3(b)(2)(A) provides that in order to receive an incentive payment, employees must resign or retire during the continuous 90-day period designated by the agency head.

Section 3(b)(2)(B) provides that the applicable period shall be a continuous 90-day period which shall end not later than December 31, 1994.

Section 3(b)(2)(C) provides that, in order to ensure the performance of the agency's mission, the agency head may make exceptions to the requirements of separation by the last day of the 90-day period, and pay voluntary separation incentives to employees who agree to continue in service, but not longer than 2 years after the last day of the 90-day period.

Section 3(b)(3) requires agency heads to formulate written voluntary separation incentive payment plans which shall be made available to all employees of the agency and to the exclusive representative of such employees. These plans must specify which agency components, occupations, geographic locations, or combinations thereof have been identified for incentives, and the percentage of employees within each who are supervisors or managers. The plans shall also indicate the beginning and ending dates of any periods for incentive offers, and the agency components, occupations, geographic locations, or combinations thereof to which the dates apply. The plans shall state whether any additional personnel reductions are anticipated after any exercise of authority under this section and, if so, what types of retraining, placement, or other similar measures will be provided in order to avoid involuntary separations. Lastly, the plans shall include any other information which may be necessary in order to permit employees who are eligible for voluntary separation incentive payments to make informed decisions.

Section 3(c)(1) requires that the voluntary separation incentive payment be paid in a lump sum after the employee's separation.

Section 3(c)(2) provides that the amount of the voluntary separation incentive payment shall be the lesser of the severance pay the employee would receive under section 5595(c) of title 5, United States Code, if the employee were entitled to payment under such section, or \$25,000.

Section 3(c)(3) bars using the voluntary separation incentive payment as a basis for payment or computation of any other type of Government benefit.

Section 3(c)(4) precludes taking the voluntary separation incentive payment into account in determining the amount of severance pay due to an employee on the basis of any other separation.

Section 3(c)(5) requires that the voluntary separation incentive payment be paid from the appropriations or funds used to pay the basic pay of the employee.

Section 3(d)(1) requires repayment of the entire amount of the incentive payment to the agency that paid it by any employee who accepts Federal employment within 2 years after the date of separation on which the incentive is based.

Section 3(d)(2) provides that if the reemployment is in a position for which there is exceptional difficulty in recruiting a qualified employee, repayment may be waived, in the case of employment in an Executive agency, by the Director of the Office of Personnel Management (at the request of the agency head); in the case of employment in the legislative branch, by the head of the employing entity or the appointing official; and in the case of employment in

the judicial branch, by the Director of the Administrative Office of the United States Courts.

Section 3(e) authorizes the Director of the Office of Personnel Management to prescribe any regulations necessary to administer subsections (a) through (d) of section 3.

Section 3(f) authorizes the Director of the Administrative Office of the United States Courts to establish, by regulation, a program for judicial branch employees that is consistent with the program established by subsections (a)–(d) of section 3.

SECTION 4. COORDINATION WITH OTHER PROVISIONS OF LAW

Section 4 adds to existing Executive branch voluntary separation incentive payment programs provisions requiring repayment by individuals whose incentives are based on separations occurring after the date of enactment of this bill and who are reemployed by the Federal government within 2 years after the dates of their separations. In cases involving reemployment in positions for which there is exceptional difficulty in recruiting a qualified employee, waiver authorities paralleling those in section 3(d)(2) are provided.

Section 4(a) amends section 5597 of title 5, United States Code, to add a new subsection (g) requiring repayment and providing waiver authorities under the separation incentive payment program of the Department of Defense.

Section 4(b) amends section 2(b) of the Central Intelligence Agency Voluntary Separation Pay Act (Public Law 103–36; 107 Stat. 104) to add language requiring repayment and providing waiver authorities under the separation incentive payment program of the Central Intelligence Agency.

SECTION 5. ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND

Section 5(a) amends section 8334 of title 5, United States Code, by adding a new subsection (m) requiring each agency to remit to the Office of Personnel Management, for deposit to the credit of the Civil Service Retirement and Disability Fund, in addition to any other payments required by the civil service retirement law, an amount equal to 9 percent of the final basic pay of each employee who retires under section 8336(d) of that title.

Section 5(b) provides that the amendment made by section 5(a) shall apply with respect to retirements occurring on or after the date of enactment of this Act.

COST

The cost estimate prepared by the Congressional Budget Office pursuant to sections 308(a) and 403 of the Congressional Budget Act of 1974, as amended, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 2, 1993.

Hon. WILLIAM CLAY,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3345, the Federal Workforce Restructuring Act of 1993, as ordered reported by the House Committee on Post Office and Civil Service on October 27, 1993.

The bill would affect direct spending and thus would be subject to pay-as-you-go procedures under the Balanced Budget and Emergency Deficit Control Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES J. BLUM
(For Robert D. Reischauer).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3345.
2. Bill title: Federal Workforce Restructuring Act of 1993.
3. Bill status: As ordered reported by the Committee on Post Office and Civil Service on October 27, 1993.
4. Bill purpose: A bill to amend title 5, United States Code, to eliminate narrow restrictions on employee training; to provide a temporary voluntary separation incentive; and for other purposes.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998
Direct spending:					
Annuity payments	198	443	137	- 18	- 18
Receipt of 9 percent payment	- 123	- 30	- 18	- 58	- 61
Total direct spending	75	413	119	- 76	- 79
Authorizations of appropriations:					
Incentive payments	1,678	25	0	0	0
Agency payment of 9 percent	123	30	18	58	61
Payment of unused leave	261	- 127	- 134	0	0
Employee training	(1) ¹	(1) ¹	(1) ¹	(1) ¹	(1) ¹
Total change in authorization level	2,062	- 72	- 116	58	61
Estimated outlays	2,062	- 72	- 116	58	61

¹ Costs cannot be estimated.

The costs of this bill fall within budget function 600.

Basis of estimate: H.R. 3345 would allow agencies of the federal government to establish programs under which separation pay would be offered until December 31, 1994 to encourage employees in the competitive civil service to retire or resign. The amount of the separation pay per employee would be the lesser of \$25,000 or the amount of severance pay the employee would qualify for under involuntary separation. Employees who accept the incentive and wish to retire must qualify under current rules for voluntary retire-

ment. We assume that the executive branch agencies will request and that the Office of Personnel Management (OPM) will grant widespread use of voluntary early retirement authority, as available under existing law, in conjunction with the use of separation incentives. The separation incentive payment program has implications both for direct spending and for appropriations.

H.R. 3345 also would remove restrictions on the use of private, non-governmental sources for employee training. Under current law, general development training is done in-house by agencies. Special training, like executive training, can be performed by the OPM or by a private source. If the training is performed by a private source, detailed reports must be sent by agencies to the OPM. The bill would eliminate the requirements for detailed reporting. This could reduce costs, if private sources of training are less expensive than OPM-sponsored training and if the elimination of reporting requirements induces agencies to substitute private sources for OPM-sponsored programs. The bill could increase costs, however, if private sources are more expensive than OPM or if agencies begin to train more employees than they would have if the restrictions remained. CBO is unable to estimate the costs of these provisions given the uncertainty of agency reactions.

Direct spending

Direct spending would increase under the bill because some employees who retire after taking the incentive would receive their annuities earlier than under current law. CBO estimates that the costs of the additional annuity payments would accumulate to \$747 million through 1998. Throughout the federal government (except for DoD, CIA, and GAO, which already have the authority to provide separation payments), about 250,000 employees will be eligible for retirement in 1994 under regular and early retirement rules. CBO's cost estimate assumes that 35 percent of employees eligible to retire under regular voluntary rules and 20 percent of employees eligible to take early retirement under reduced age and service requirements would accept the incentive and retire. These rates of acceptance are based on experience at both the Department of Defense (DoD) and the U.S. Postal Service (USPS) and assume some targeting by agencies in the future.

Based on results from a program at the USPS, CBO expects that 65 percent of regular retirees and 40 percent of early retirees who take the incentive and retire would have retired anyway, without the incentive. The incentive payments, therefore, would induce approximately 29,000 employees to retire earlier than they would have otherwise. The benefits paid to these retirees constitute direct spending. CBO assumes that these people would retire one or two years earlier. As a result, initial spending for retirement benefits under the incentive program would exceed the baseline. Beginning in 1997, however, savings would result because people who retire early accept an annuity that is lower than the one they would have had in the absence of an incentive.

This proposal would also require agencies to contribute to the retirement trust fund a total of 9 percent of the final salary of all future involuntary and voluntary early retirees in the Civil Service Retirement System. This requirement would extend beyond the

limited period during which agencies can make incentive payments. Receipt of this payment into the trust fund would offset direct spending costs.

Amounts authorized for appropriation

The government also would incur costs that would be funded by appropriations. These costs accumulate to \$2 billion through 1998. The largest component of this cost is the incentive payments, which total an estimated \$1.7 billion in 1994. We assume that all retirees, more than 60,000 in total, would receive a \$25,000 separation incentive and that more than 24,000 resignees would accept an average separation incentive of \$7,500.

The estimated cost of agency payments to the retirement trust fund of 9 percent of final salary for all early retirees is \$123 million in 1994, \$30 million in 1995, \$18 million in 1996, \$58 million in 1997, and \$61 million in 1998. This estimate assumes an average of about 7,000 early retirements in 1995, 4,000 in 1996, and about 12,000 in 1997 and 1998.

The estimated payout for unused annual leave is \$261 million in 1994. The average payment for unused leave is assumed to be \$3,800 for retirees and \$1,400 for resignees. These payouts are offset in later years when separating workers would have retired anyway.

6. Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. The pay-as-you-go effects of the bill are as follows.

(By fiscal years, in millions of dollars)

	1994	1995	1996	1997	1998
Outlays	75	413	119	- 76	- 79
Receipts	(1)	(1)	(1)	(1)	(1)

¹ Not applicable.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On October 12, 1993 the CBO prepared a cost estimate of H.R. 3218, the Federal Workforce Restructuring Act of 1993, as introduced in the House of Representatives on October 5, 1993 and referred to the Committee on Post Office and Civil Service. This estimate of H.R. 3345 differs from the previous estimate of H.R. 3218 in that the time frame in which an agency may offer incentive payments has been extended three months to December 31, 1994. In this estimate, a small number of those employees accepting the incentive payment are assumed to do so during the first three months of fiscal year 1995.

10. Estimate prepared by: Wayne Boyington.

11. Estimate approved by: C. G. Nuckols, Assistant Director for Budget Analysis.

OVERSIGHT

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Compensation and Employee Benefits and the Subcommittee on the Civil Service are vested with legisla-

tive and oversight jurisdiction over the subject matter of this legislation. As a result of their hearings and deliberations, the subcommittees have concluded that there is ample need and justification for enacting this legislation.

The committee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c)(2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of House Rule XI, the committee has concluded that enactment of H.R. 3345 will have no inflationary impact on the national economy.

HOUSE OF REPRESENTATIVES,
PERMANENT SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, November 19, 1993.

Hon. WILLIAM CLAY,
Chairman, Committee on Post Office and Civil Service, Cannon House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I understand the Committee on Post Office and Civil Service will file today H.R. 3345, the "Federal Workforce Restructuring Act."

H.R. 3345 includes an amendment to the CIA Voluntary Separation Pay Act which is within the jurisdiction of the Permanent Select Committee on Intelligence. The amendment requires the repayment of separation pay to the CIA if an employee separating on or after enactment of the Federal Workforce Restructuring Act accepts employment with the U.S. Government within two years of separation. H.R. 3345 also would permit repayment to be waived under certain circumstances.

I have reviewed the section of H.R. 3345 which amends the CIA Voluntary Separation Pay Act. In light of the merits of imposing a uniform two-year rule on all Federal government employees receiving separation pay, the Permanent Select Committee on Intelligence will not seek the sequential referral of H.R. 3345 to which it is entitled, with the understanding, of course, that no further precedent concerning the Committee's jurisdiction on this matter is established.

I would appreciate your including this letter as part of your Committee's report accompanying H.R. 3345, and I thank you for the cooperation that you and your Committee have extended to the Permanent Select Committee on Intelligence on this matter.

Sincerely,

DAN GLICKMAN, *Chairman.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart B—Employment and Retention

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CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

* * * * *

SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS COMMISSION

§ 3381. Training

(a) * * *

* * * * *

(e) Except as provided by subsection (d) of this section, the provisions of chapter 41 of this title, other than sections [4105(a),] 4105, 4107(a) and (b), and 4111, shall not apply to training under this section.

* * * * *

Subpart C—Employee Performance

CHAPTER 41—TRAINING

- Sec.
4101. Definitions.
4102. Exceptions; Presidential authority.
4103. Establishment of training programs.

* * * * *

[4106. Non-Government facilities; amount of training limited.

[4107. Non-Government facilities; restrictions.]

4107. *Restriction on degree training.*

* * * * *

[4114. Non-Government facilities; review of training programs.]

* * * * *

§ 4101. Definitions

For the purpose of this chapter—

(1) * * *

* * * * *

(4) “training” means the process of providing for and making available to an employee, and placing or enrolling the employee in, a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other [fields which are

or will be directly related to the performance by the employee of official duties for the Government, in order to increase the knowledge, proficiency, ability, skill, and qualifications of the employee in the performance of official duties;] *fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals;*

* * * * *

§ 4103. Establishment of training programs

(a) [In order to increase economy and efficiency in the operations of the agency and to raise the standards of performance by employees of their official duties to the maximum possible level of proficiency, the head of each agency, in conformity with this chapter, shall establish, operate, and maintain] *In order to assist in achieving an agency's mission and performance goals by improving employee and organizational performance, the head of each agency, in conformity with this chapter, shall establish, operate, maintain, and evaluate a program or programs, and a plan or plans thereunder, for the training of employees in or under the agency by, in, and through Government facilities and non-Government facilities. Each program, and plan thereunder, shall—*

(1) conform to the principles, standards, and related requirements contained in the regulations prescribed under section 4118 of this title;

(2) provide for adequate administrative control by appropriate authority; [and]

(3) *provide that information concerning the selection and assignment of employees for training and the applicable training limitations and restrictions be made available to employees of the agency; and*

[(3)] (4) provide for the encouragement of self-training by employees by means of appropriate recognition of resultant increases in proficiency, skill, and capacity.

Two or more agencies jointly may operate under a training program.

(b)(1) Notwithstanding any other provision of this chapter, an agency may train any employee of the agency to prepare the employee for placement in another agency if the head of the agency [determines that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under section 5595 of this title.] *determines that such training would be in the interests of the Government.*

[(2)] Before undertaking any training under this subsection, the head of the agency shall obtain verification from the Office of Personnel Management that there exists a reasonable expectation of placement in another agency.

[(3)] (2) In selecting an employee for training under this subsection, the head of the agency shall consider—

(A) the extent to which the current skills, knowledge, and abilities of the employee may be utilized in the new position;

(B) the employee's capability to learn skills and acquire knowledge and abilities needed in the new position; and

(C) the benefits to the Government which would result from retaining the employee in the Federal service.

* * * * *

§ 4105. Non-Government facilities; use of

[(a)] The head of an agency, without regard to section 5 of title 41, may make agreements or other arrangements for the training of employees of the agency by, in, or through non-Government facilities under this chapter.

[(b)] An agency program for the training of employees by, in, and through non-Government facilities under this chapter shall—

[(1)] provide that information concerning the selection and assignment of employees for training and the applicable training limitations and restrictions be made available to employees of the agency; and

[(2)] give consideration to the needs and requirements of the agency in recruiting and retaining scientific, professional, technical, and administrative employees.

[(c)] In order to protect the Government concerning payment and reimbursement of training expenses, each agency shall prescribe such regulations as it considers necessary to implement the regulations prescribed under section 4118(a)(8) of this title.

§ 4106. Non-Government facilities; amount of training limited

[(a)] The training of employees by, in, and through non-Government facilities under this chapter is subject to the following limitations:

[(1)] The number of man-years of training for an agency in a fiscal year may not exceed 1 percent of the total number of man-years of civilian employment for the agency in the same fiscal year as disclosed by the agency budget estimates for the year.

[(2)] An employee having less than 1 year of current, continuous civilian service is not eligible for training unless the head of his agency determines, under regulations prescribed under section 4118 of this title, that training for the employee is in the public interest.

[(3)] The time spent by an employee in training may not exceed 1 year in the first 10-year period and in each subsequent 10-year period of his continuous or non-continuous civilian service in the Government.

The Office of Personnel Management may prescribe other limitations, in accordance with the provisions and purposes of this chapter, concerning the time which may be spent by an employee in training.

[(b)] On recommendation of the head of an agency, the Office may waive, with respect to that agency or part thereof or one or more employees therein, all or any of the limitations covered by subsection (a) of this section, if the Office determines that the application of all or any of the limitations thereto is contrary to the public interest. The Office, in the public interest, may reimpose all or any of the limitations so waived.

[§ 4107. Non-Government facilities; restrictions]

§4107. Restriction on degree training

[(a) Appropriations or other funds available to an agency are not available for payment for training an employee—

[(1) by, in or through a non-Government facility which teaches or advocates the overthrow of the Government of the United States by force or violence; or

[(2) by or through an individual concerning whom determination has been made by a proper Government administrative or investigatory authority that, on the basis of information or evidence developed in investigations and procedures authorized by law or Executive order, there exists a reasonable doubt of his loyalty to the United States.

[(b) This chapter does not authorize training an employee by, in, or through a non-Government facility a substantial part of the activities of which is—

[(1) carrying on propaganda, or otherwise attempting, to influence legislation; or

[(2) participating or intervening, including publishing or distributing statements, in a political campaign on behalf of a candidate for public office.

[(c)] (a) Except as provided in subsection [(d)] (b) of this section, this chapter does not authorize the selection and assignment of an employee for training [by, in, or through a non-Government facility], or the payment or reimbursement of the costs of training, for—

(1) the purpose of providing an opportunity to an employee to obtain an academic degree in order to qualify for appointment to a particular position for which the academic degree is a basic requirement; or

(2) the sole purpose of providing an opportunity to an employee to obtain one or more academic degrees.

[(d)] (b)(1) The regulations prescribed under section 4118 of this title shall include provisions under which the head of an agency may provide training, or payment or reimbursement for the costs of any training, not otherwise allowable under subsection [(c)] (a) of this section, if necessary to assist in the recruitment or retention of employees in occupations in which the Government has or anticipates a shortage of qualified personnel, especially in occupations involving critical skills (as defined under such regulations).

(2) In exercising any authority under this subsection, an agency shall, consistent with the merit system principles set forth in paragraphs (1) and (2) of section 2301(b) of this title, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

(3) No authority under this subsection may be exercised on behalf of any employee occupying or seeking to qualify for appointment to any position which is excepted from the competitive service because of its confidential policy-determining, policy-making, or policy-advocating character.

§ 4108. Employee agreements; service after training

(a) An employee selected for training [by, in, or through a non-Government facility under this chapter] *for more than a minimum period prescribed by the head of the agency shall agree in writing with the Government before assignment to training that he will—*

(1) continue in the service of his agency after the end of the training period for a period at least equal to three times the length of the training period unless he is involuntarily separated from the service of his agency; and

(2) pay to the Government the amount of the additional expenses incurred by the Government in connection with his training if he is voluntarily separated from the service of his agency before the end of the period for which he has agreed to continue in the service of his agency.

* * * * *

§ 4113. Agency review of training needs; annual program reports

(a) * * *

(b) Each agency shall report [annually to the Office,] *to the Office, at least once every 3 years, and at such times and in such form as the Office prescribes, on its programs and plans for the training of employees under this chapter. [The report shall set forth—*

[(1) such information concerning the expenditures of the agency in connection with training as the Office considers appropriate;

[(2) the name of each employee of the agency, except a student participating in a cooperative educational program, who, during the period covered by the report, received training by, in, or through a non-Government facility for more than 120 days; the grade, title, and primary duties of the position held by the employee; the name of the non-Government facility from which the training was received; the nature, length, and cost of the training to the Government; and the relationship of the training to official duties;

[(3) the name of each employee of the agency who received a contribution or award under section 4111(a) of this title during the period covered by the report;

[(4) a statement concerning the value of the training to the agency;

[(5) estimates of the extent to which economies and improved operations have resulted from the training; and

[(6) such other information as the agency or the Office considers appropriate.] *The report shall set forth—*

(1) *information needed to determine that training is being provided in a manner which is in compliance with applicable laws intended to protect or promote equal employment opportunity; and*

(2) *information concerning the expenditures of the agency in connection with training and such other information as the Office considers appropriate.*

[§ 4114. Non-Government facilities; review of training programs

[[The Office of Personnel Management, at the times and to the extent it considers necessary, shall review the operations, activities, and related transactions of each agency in connection with each agency program, and plan thereunder, for the training of its employees by, in, and through non-Government facilities under this chapter in order to determine whether the operations, activities, and related transactions comply with the programs and plans, the provisions and purposes of this chapter, and the principles, standards, and related requirements contained in the regulations prescribed under section 4118 of this title. Each agency, on request of the Office shall cooperate and assist in the review. If the Office finds that noncompliance exists in an agency, the Office, after consultation with the agency, shall certify to the head of the agency its recommendations for change of actions and procedures. If, after a reasonable time for placing its recommendations in effect, the Office finds that noncompliance continues to exist in the agency, the Office shall report the finding to the President for such action as he considers appropriate.]

* * * * *

§ 4118. Regulations

(a) The Office of Personnel Management, after considering the needs and requirements of each agency for training its employees and after consulting with the agencies principally concerned, shall prescribe regulations containing the principles, standards, and related requirements for the programs, and plans thereunder, for the training of employees under this chapter, including requirements for coordination of and reasonable uniformity in the agency training programs and plans. The regulations shall provide for the maintenance of necessary information concerning the general conduct of the training activities of each agency, and such other information as is necessary to enable the President and Congress to discharge effectively their respective duties and responsibilities for supervision, control, and review of these training programs. The regulations also shall cover—

(1) * * *

* * * * *

(7) the submission of reports by the agencies on results and effects of training programs and plans and economies resulting therefrom, including estimates of costs of training [by, in, and through non-Government facilities];

* * * * *

[(b) In addition to the matters set forth by subsection (a) of this section, the regulations, concerning training of employees by, in, or through non-Government facilities, shall—

[(1) prescribe general policies governing the selection of a non-Government facility to provide training;

[(2) authorize training of employees only after the head of the agency concerned determines that adequate training for employees by, in, or through a Government facility is not rea-

sonably available, and that consideration has been given to the existing or reasonably foreseeable availability and use of fully trained employees; and

[(3) prohibit training an employee for the purpose of filling a position by promotion if there is in the agency concerned another employee, of equal ability and suitability, fully qualified to fill the position and available at, or within a reasonable distance from, the place where the duties of the position are to be performed.

[(c)] (b) The Office, in accordance with this chapter, may revise, supplement, or abolish regulations prescribed under this section, and prescribe additional regulations.

[(d)] (c) This section does not authorize the Office to prescribe the types and methods of intra-agency training or to regulate the details of intra-agency training programs.

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Subpart D—Pay and Allowances

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CHAPTER 55—PAY ADMINISTRATION

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SUBCHAPTER IX—SEVERANCE PAY AND BACK PAY

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§ 5597. Separation pay

(a) * * *

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(g)(1) *An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of enactment of the Federal Workforce Restructuring Act of 1993, and accepts employment with the Government of the United States within 2 years after the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the defense agency that paid the separation pay.*

(2)(A) *If the employment is with an Executive agency, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee.*

(B) *If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee.*

(C) *If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee.*

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Subpart G—Insurance and Annuities

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CHAPTER 83—RETIREMENT

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SUBCHAPTER III—CIVIL SERVICE RETIREMENT

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§ 8334. Deductions, contributions, and deposits

(a) * * *

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(m)(1) *In addition to any other payments required by this subchapter, an agency shall remit to the Office for deposit in the Treasury of the United States to the credit of the Fund an amount equal to 9 percent of the final basic pay of each employee of the agency who retires under section 8336(d).*

(2) *For the purpose of this subsection, the term “final basic pay”, with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee’s final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.*

* * * * *

SECTION 2 OF THE CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION PAY ACT

SEC. 2. SEPARATION PAY.

(a) * * *

(b) **ESTABLISHMENT OF PROGRAM.**—In order to avoid or minimize the need for involuntary separations due to downsizing, reorganization, transfer of function, or other similar action, the Director may establish a program under which employees may be offered separation pay to separate from service voluntarily (whether by retirement or resignation). An employee who receives separation pay under such program may not be reemployed by the Central Intelligence Agency for the 12-month period beginning on the effective date of the employee’s separation. *An employee who receives separation pay under this section, on the basis of a separation occurring on or after the date of enactment of the Federal Workforce Restructuring Act of 1993 and accepts employment with the Government of the United States within 2 years after the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the Central Intelligence Agency. If the employment is with an Executive agency (as defined in section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee. If the employment is with an entity in the legis-*

lative branch, the head of the entity or the appointing official may waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee.

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